IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10087 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LEGAL HEIRS OF PURUSHOTTAM GAJADHAR UPADHYAY

Versus

POLICE COMMISSIONER

Appearance:

MR NILESH M SHAH for the Petitioners.

MR MAYANK DESAI for Petitioner No. 1-1/8-1/8

Mr.Joshi, Assistant GOVERNMENT PLEADER, for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2001

ORAL JUDGEMENT

1. Rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The petitioners are the heirs of one Mr.Purushottam Gajadhar Upadhyay, a deceased Government employee. The deceased was working in the Police department as constable. It is averred in the petition that on December 12, 1996, he got severe chest pain and he was taken to a private Clinic of Dr.Rumin B. Shah and since his condition further deteriorated, he was shifted to Mayo Hospital. Coronary Angiography followed by a Coronary Angioplasty were performed on him on January 13, 1997.

3. The deceased spent Rs.98,521/- for the said treatment and he, therefore, submitted bills with the relevant material for the purpose of reimbursement of the said amount. However, respondent No.1, by his letter dated 31st March, 1998, refused to make any payment on the ground that the deceased was not entitled for any amount. The deceased therafter again applied on 8.6.1998. That application was also dismissed on 21st December, 1998. Subsequently, after making those applications, unfortunately, he died on 17.11.1999. The heirs of the deceased employee, therefore, approached this Court by way of this petition, challenging the action of the respondents in not reimbursing the medical expenditure incurred by the deceased for the treatment. It is prayed that the Department should reimburse Rs.98,521/- which is the amount spent by the deceased.

4. In response to the notice issued in this matter, affidavit-in-reply has been filed by the Department. It is the say of the Department that while taking the treatment in Mayo Hospital, the deceased did not take prior approval of the State Government and that the Mayo Hospital is not a recognised private Hospital by the State of Gujarat. It is stated that the Director, Medical Services, by letter dated 31.3.1998 opined that reimbursement could not be granted in view of the fact that the same treatment is available at Government Hospital at Vadodara and Ahmedabad and the deceased did not go for treatment either in Vadodara or Ahmedabad. The proposal sent by the office of the deceased employee to the Additional Director, Medical Services, was also rejected and the said decision was intimated to the deceased by letter dated 19.1.1999. It is further stated in the affidavit-in-reply that the deceased had taken treatment in a private hospital not recognised by the Government of Gujarat and the employee can take treatment in a private hospital only when the said treatment is not available in the Government hospital and, therefore, the deceased was not entitled for reimbursement of the amount in question.

5. It is required to be noted that because of the emergency, the deceased was required to be taken to Mayo Hospital and averment is also made in the petition in this behalf. The petitioners have also produced on record G.R. dated 1st May, 1997, wherein reference is made about granting amount as a special case. It was argued on behalf of the petitioners that even as per the said G.R. at Annexure `A', the deceased who had undergone Coronary Angiography and Coronary Angioplasty would be entitled to Rs.58,000/- as per the amount prescribed on the aforesaid two heads as per the said G.R.

6. It is required to be noted that when there is an emergency, normally, the person would like to save his own life and instead of admitting himself or herself at the Government Hospital or instead of wasting time to find out whether such type of treatment is available in Government hospital or not, a person would naturally try to get medical facility at the earliest by approaching the nearest hospital. This is not a case in which the deceased, even though having sufficient time, on his own volition, got himself admitted in the Mayo Hospital. It is not in dispute that the said Mayo hospital is a hospital which is giving treatment for heart ailments. It is also not in dispute that the deceased was suffering from heart trouble and ultimately, he died while he was in service. The petitioners have also produced on record certificate of one Dr.Upendra J. Shah, which is at page 16, wherein he stated that the deceased came to Mayo Hospital on 7.1.1997 in a very serious condition and he suffered a massive heart attack, and he had Hypotension (Low B.P.) and was in Pulmonary Oedema (difficulty in breathing). It is also further stated in the said certificate that it was not possible to shift him to another City for further treatment and that the deceased was taken up for Coronary Angiography and then Coronary Angioplasty at Mayo Hospital. It is clearly stated in the said certificate that he was not in a condition to be shifted to Ahmedabad or any other City for further treatment and he was treated at Mayo Hospital. Looking to the aforesaid circumstances, therefore, it is clear that there was no option available with the family members of the deceased employee at the relevant time but to give him emergency treatment and for that, it was not feasible or practicable for the patient or his relatives to wait either to apply for sanction from the Government or taking prior approval for the purpose of treating the ailment. The facts of the case themselves make it clear that there was no time left for the patient, i.e. the

deceased employee, to take prior approval from the employer for the purpose of taking such treatment in non-government hospital. When it is found that the amount was genuinely spent for the said medical treatment, it was absolutely unjust on the part of the respondents to decline the reimbursement of the amount spent by the deceased for such treatment. If this is not a special case for giving reimbursement of medical expenditure, there can be no better case wherein such type of reimbursement can be sanctioned by the State Government. One would not like to sacrifice life by entering into correspondence for getting prior approval for the purpose of securing reimbursement of the amount spent for medical treatment. In all such cases, normally, attempt is made by the patient first to secure good medical treatment and at that time, nobody will be in a proper frame of mind to find out the Rules and Regulations and try to locate the Government hospital. In such cases, therefore, rational, pragmatic and humane approach is required to be taken by the Department before becoming rigid and technical in the matter of deciding the claim of reimbursement of the Government servant, who had undergone such medical treatment. The stand taken by the Department to the effect that prior approval is not taken before taking treatment in the hospital is too rigid and cannot be upheld looking to the facts of the case. Looking to the facts and circumstances of the case, therefore, the petitioners are entitled to get reimbursement of the amount which they have spent for the treatment of the deceased employee for the purpose of taking Coronary Angiography and Coronary Angioplasty. The said amount comes to Rs.58,000/-.

It is expected that in such type of cases, rational and pragmatic approach will be adopted by the Department before denying the claim of the person on such hypertechnical ground.

7. In Surjit Singh v. State of Punjab and others, AIR 1996 SC 1388, it has been observed by the Apex Court as under :-

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> 10. It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and

right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right had recognised it. Attention can usefully be drawn to versus 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine :

"17. Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20. The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22. If one does not prevent what is unpleasant to himself, who else will do it? Therefore, one should do what is good to himself."

11. The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to alternative hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have

> gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there, are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course, the sum of Rs.40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.
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> ... ..."

8. The petition is accordingly allowed partly by directing the respondents to reimburse an amount of Rs.58,000/-which the deceased employee spent for the purpose of Coronary Angiography and Coronary Angioplasty. The respondents are directed to reimburse the said amount within a period of 15 days from the date of receipt of the writ from this Court. However, if there is any delay in making such payment after the aforesaid period of 15 days, the petitioners are entitled to receive the said amount with interest at the rate of 18% per annum for any further delay in making the payment as aforesaid. Petition is accordingly allowed to the aforeaid extent. Rule is made absolute with no order as to costs.

(P.B. Majmudar, J.)

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(apj)